IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9563 of 2005

Between:

Bokka China Sivaiah S/o.Peda Kotaiah
Sarpanch, Grampanchayat Gorantla Guntur (R) Mandal, Guntur District.

..... PETITIONER

AND

1 The District Collector (Panchayat Wing), Guntur District Guntur.
2 The Deputy Superintendent of Police (ACB) Vijayawada, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order more particularly in the nature of writ of Certiorari calling for the records the 1st respondent pertaining to his order dt.19.4.2005 in ROC.No.1210/2005-G6 and to quash the same declaring that it is illegal, arbitrary, malafide, ultravires, without jurisdiction and against the principles of natural justice and to pass such other further order or orders.

Counsel for the Petitioner : MR. K.SARVA BHOUMA RAO

Counsel for the Respondent No.1 : G.P. for Panchayat Raj & Rural Development

Counsel for the Respondent No.2:Mr. V. Ravindra Rao.

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.9563 OF 2005

ORDER :

This writ petition is filed questioning the order of the 1st respondent, dated 19-4-2005 passed under Section 249(6) of The A.P. Panchayat Raj Act, 1994 (for short, 'the Act') whereunder the petitioner was placed under suspension for a period of three months with immediate effect.

Since admittedly against the said order, an alternative remedy is available by way of Revision under Section 264 of the Act, without exhausting the said remedy, the petitioner cannot maintain this writ petition.

However, the learned Counsel for the petitioner submits that since the respondents failed to furnish the material on the basis of which the proceedings were initiated, the impugned order is in violation of the principles of natural justice and therefore notwithstanding the alternative remedy available under the Act, the petitioner is

entitled to maintain this writ petition.

It is true that the availability of alternative remedy is not an absolute bar and the writ petition can be maintained without exhausting the alternative remedy where the impugned order is in violation of principles of natural justice.

In the case on hand, the allegation of the petitioner is that the 1st respondent failed to furnish a copy of the message received from the 2nd respondent – Deputy Superintendent of Police, which forms basis of the impugned proceedings.

The learned Counsel for the petitioner points out that the show-cause notice itself refers to the said message received from the 2nd respondent, however in spite of the request by the petitioner, the 1st respondent failed to furnish a copy of the said message. The learned Counsel contends that in the absence of a copy of the said message of the 2nd respondent, the allegation against the petitioner cannot be properly explained and therefore the impugned order is in violation of the principles of natural justice and liable to be set aside on that ground alone.

It is to be noted that in the case on hand the proceedings were initiated against the petitioner on the ground that he has allegedly accepted bribe of Rs.7,000/- from one Pathi Veermani for approval of a building plan. The said information was passed on to the first respondent by the Deputy Superintendent of Police (ACB), Vijayawada on 27-02-2005 and accordingly while referring the said message of the Deputy Superintendent of Police and specifying the allegation against the petitioner, he was called upon to submit his explanation as to why he should not be placed under suspension under Section 249(6) of the Act. The relevant portion of the show-cause notice specifying the allegation against the petitioner may be extracted hereunder :

> *"The D.S.P., A.C.B., Vijayawada Range, Vijayawada in his message dated 27-2-2005 reported that Sri B.China Sivaiah, Sarpanch, Gram Panchayat, Gorantla in Guntur Mandal demanded and accepted a bribe of Rs.7,000/- on 26-2-2005 at Gram Panchayat Office, Gorantla from Sri Pathi Veeramani, S/o. Krishna Prasad, A.T. Agraharam,*

Guntur, Manager to Parameswari Industries, Industrial Estate, Gorantla for approval of plan of the building. He also reported that tainted currency of Rs.7,000/- was recovered from the Sarpanch from his upper left side shirt pocket and when tested and that sodium carbonate solution yielded positive result. He requested to take necessary action against the Sarpanch."

As can be seen, the petitioner was made known of the allegation in detail and was called upon to explain the same. It is not as if the second respondent has conducted any enquiry behind the back of the petitioner and submitted a report which formed the basis for the show-cause notice. The reference was to the source of information and the allegation was specified in detail. Hence, I am unable to hold that the petitioner was in any way prejudiced by not furnishing a copy of the message of the second respondent dated 27-2-2005 and therefore it cannot be held that the impugned order is in violation of principles of natural justice.

Accordingly, granting leave and liberty to the petitioner to work out the alternative remedy available under law, the Writ Petition is disposed of. No costs.

However, having regard to the facts and circumstances of the case, there shall be a direction that the impugned order dated 19-04-2005 shall not be given effect to for a period of two weeks from today.

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26th April, 2005.

Note:- CC by tomorrow.

(B/O)

gbs

To

1 The District Collector (Panchayat Wing), Guntur District Guntur.
2 The Deputy Superintendent of Police (ACB) Vijayawada, Krishna District.

3. Two CCs to G.P. for Panchayat Raj & Rural Development, High Court of AP Bldgs, Hyderabad (OUT).

4. 2 CD copies